UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	Case No. 23-90085-CML
	Chapter 11
SORRENTO THERAPEUTICS, INC. et al.,	
	515 Rusk Street
	Houston, TX 77002
Debtors.	
	Friday, March 8, 2024
	1:03 p.m.

TRANSCRIPT OF [1884] DEBTORS' EMERGENCY MOTION FOR ENTRY OF ORDERS APPROVING (I) SENIOR SECURED SUPERPRIORITY FINANCING AND (II)(A) SALE OF ASSETS AND (B) MODIFICATION TO CHAPTER 11 PLAN
BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Latham & Watkins LLP By: CAROLINE RECKLER, ESQ. JONATHAN GORDON, ESQ. 330 N Wabash Ave #2800 Chicago, IL 60611 312-876-7700
	Latham & Watkins LLP By: CHRISTOPHER HARRIS, ESQ. 1271 6th Ave New York, NY 10020 212-906-1200
APPEARANCES CONTINUED.	
Audio Operator:	Courtroom ECRO Personnel
Transcription Company:	Access Transcripts, LLC 10110 Youngwood Lane Fishers, IN 46048 (855) 873-2223 www.accesstranscripts.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (Continued):

For the Debtors:	Jackson Walker LLP By: KRISTHY M. PEGUERO, ESQ. 1401 McKinney St. Ste 1900 Houston, TX 77010 713-752-4440
For Vivasor Inc.:	Paul Hastings By: JAMES T. GROGAN, ESQ. 600 Travis Street 58th Floor Houston, TX 77002 713-860-7300
For the Official Committee of Unsecured Creditors:	Milbank LLP By: MARK SHINDERMAN, ESQ. 2029 Century Park East 33rd Floor Los Angeles, CA 90067-3019 424-386-4000 Norton Rose Fulbright US LLP By: Ryan E. Manns, ESQ. 200 Ross Ave Ste 3600 Dallas, TX 75201 214-855-0000
For the Official Committee of Equity Securities Holders:	Glenn Agre Bergman & Fuentes LLP By: ANDREW K. GLENN, ESQ. 1185 Avenue of the Americas 22nd Floor New York, NY 10036 212-970-1600 Greenberg Traurig LLP By: SHARI HEYEN, ESQ. 1000 Louisiana Ste 1800 Houston, TX 77002 713-374-3500 Greenberg Traurig LLP By: John Hutton, ESQ. 333 SE 2nd Avenue Suite 4400 Miami, FL 33131 305-579-0500

TELEPHONIC APPEARANCES (Continued):

For the U.S. Trustee:	Office of the U.S. Trustee By: ALICIA LENAE BARCOMB, ESQ. HECTOR DURAN, JR., ESQ. MILLIE A. SALL, ESQ. 515 Rusk Suite 3516 Houston, TX 77002 713-718-4661
For China Oncology Focus Limited:	Locke Lord LLP By: WILLIAM STEVEN BRYANT, ESQ. 300 Colorado Street, Suite 2100 Austin, TX 78701 512-305-4726
For Timothy Culberson:	The Culberson Law Office, PLLC (Pro se) By: TIMOTHY CULBERSON, ESQ. 25700 I-45 North Suite 100 Spring, TX 77386 832-236-2326
For Indena S.p.A.:	K&L Gates LLP By: BRIAN T. PETERSON, ESQ. 925 Fourth Avenue Suite 2900 Seattle, WA 98104-1158 206-370-5774
For Jackson Walker LLP:	Kane Russell Coleman Logan By: JOHN KANE, ESQ. 5151 San Felipe St #800 Houston, TX 77056 713-425-7400
For Dr. Gang Gary Chen and Dr. Zhenwei David Miao:	Franklin Soto Leeds LLP By: DEAN T. KIRBY, JR., ESQ. 444 West C Street Ste 300 San Diego, CA 92101 619-525-1652
Also Present:	JACQUELYN WILSON MARK BRUNSWICK JEANNE RIDGWAY

I N D E X
3/8/24

(Proceedings commence at 1:03 p.m.)

THE CLERK: All rise. Please be seated.

THE COURT: Good afternoon, everyone. Okay. Okay. Good afternoon, everyone. This is Judge Lopez. Today is March the 8th. I'm going to call the 1 p.m. case which is Sorrento Therapeutic Inc., Case Number 23-90085.

Why don't I take appearances in the courtroom. And then if anyone knows they're going to be speaking today, why don't you hit "five star" and I will unmute your line. There's about a 178 people on the line, so I've enabled the mute feature. Once I unmute your line, I'd ask that you please just monitor yourselves.

Also ask parties who are going to make appearances, why don't you make an electronic appearance today, and just find the Southern District of Texas website. You'll find a link to my home page. You can find a place to make appearances and you'll find a link to this case.

Okay. Let me take appearances in the courtroom.

MS. RECKLER: Good afternoon, Your Honor. Caroline Reckler of Latham & Watkins on behalf of the debtors. I'm joined in the courtroom with my colleagues Mr. Harris and Mr. Gordon and the debtors' chief restructuring officer Mr. Meghji.

THE COURT: Okay. Good afternoon.

MR. GROGAN: Good afternoon, Your Honor. James

Grogan from Paul Hastings. We're here today on behalf of Vivasor, Inc., V-I-V-A-S-O-R, which is the prospective buyer in the sale that --

THE COURT: Oh, okay.

MR. GROGAN: -- before Your Honor today. With me online is Mr. Rawlins, my partner, Justin Rawlins.

THE COURT: Okay. Good afternoon.

MR. SHINDERMAN: Good afternoon, Your Honor. Mark Shinderman of Milbank on behalf of the official creditors committee. I'm here with John Schlant of BRG, who's the financial advisor to the committee.

THE COURT: Okay. Good afternoon.

Mr. Glenn, good afternoon.

MR. GLENN: Nice to finally see you in person. Andrew Glenn, Glenn Agre Bergman & Fuentes on behalf of the equity committee. Your Honor, we're on a very strict budget in this case with fee caps. That's the primary reason why I've been appearing remotely before the Court, but it's certainly a pleasure to be before you today.

THE COURT: It's certainly acceptable as well. I completely -- good to see you though.

MR. GLENN: And thank you. Rebwar Berzinji of Seaport is here also on behalf of the equity committee. It's our investment banker.

THE COURT: Okay. Good afternoon.

MR. GLENN: Thank you.

THE COURT: Good afternoon, Ms. Barcomb.

MS. BARCOMB: Good afternoon, Your Honor. Alicia Barcomb on behalf of the United States Trustee. I'm joined in the courtroom today by my colleagues, Millie Sall and Hector Duran.

THE COURT: Okay. Good afternoon to both of you.

MS. HEYEN: Good afternoon, Your Honor. Shari Heyen of Greenberg Traurig, also here on behalf of the equity committee.

THE COURT: Okay. Good afternoon.

Alrighty. Let me just going to go online. There's about 190 people on the line now, so I'm just going to unmute lines in the order in which I see them.

So here's a 512 number.

MR. BRYANT: Thank you, Your Honor. This is Steven Bryant on behalf of China Oncology Focus Limited.

THE COURT: Good afternoon, Mr. Bryant.

Alrighty. Here's an 832 number.

MR. CULBERSON: Good afternoon. This is Tim Culberson, Your Honor, on behalf of myself.

THE COURT: Good afternoon, Mr. Culberson.

Just going down the line here. Checking it one more time. Okay. That's everyone.

Who should I turn this over to?

MS. RECKLER: Good afternoon, Your Honor. Caroline Reckler of Latham & Watkins on behalf of the debtors.

Your Honor, our agenda is at Docket Number 1984 and our witness and exhibit list is at Docket Number 1974. We are here for approval of the DIP on a final basis. That's a $5 million DIP loan, as well as the related sale of substantially all of the debtors' remaining assets, along with approval of certain plan modifications.

Your Honor, that combined motion was filed on February 9th, and it's at Docket Number 1884. The proposed final DIP order is at Docket Number 1978, and the proposed sale order, which also includes the plan modifications and the asset purchase agreement, is at Docket Number 1995. And in a minute, I have one modification that I need to read onto the record to resolve an objection.

THE COURT: Okay.

MS. RECKLER: Your Honor, in terms of the objections, the United States Trustees' DIP objection from the prior hearing remains pending at Docket Number 1910. We spoke to the United States Trustee, and we believe their issues will be resolved once we put on our evidence and they've asked us to do that.

THE COURT: Okay.

MS. RECKLER: But I will let them confirm after we get through the evidence and hopefully that objection will be

resolved.

THE COURT: Okay.

MS. RECKLER: They've also asked that we make a statement on the record, which I'm happy to do now. The final DIP order contains a finding that venue is proper today. The debtors represent that the finding does not and will not prejudice the pending motions to transfer venue, as I believe Your Honor acknowledged at the prior hearing.

THE COURT: Okay. Thank you.

MS. RECKLER: Your Honor, regarding the sale, there are a few remaining objections on the docket. One was filed by the equity committee, and that is at Docket Number 1930. And I'll get to that in a moment, and I do think that has been resolved just in the last few minutes.

THE COURT: Okay.

MS. RECKLER: One objection was also filed by litigants Doctors Chen and Miao, and that's at Docket Number 1969. And that remains pending, and my colleague Mr. Gordon will make an argument on that objection at the appropriate time.

THE COURT: Okay.

MS. RECKLER: There was also an objection filed by an IP license counterparty at Docket Number 1890, and we have resolved that objection as well with language in the order, but I do need -- there was a typo, so I do need to make one

clarification on the record. And that clarification can be found -- it will be relevant to paragraph MM, and the reference to COFL license assets should read COFL license agreement instead. And the parties have agreed that was just an inadvertent error in the language.

THE COURT: Okay.

MS. RECKLER: So that really -- where I think that leaves us is with one live objection. We filed a reply yesterday, and that's at Docket Number 1983, regarding the equity committee's now resolved objection and the Chen and Miao objection. The Creditors Committee filed responses in support of the debtors at Docket Numbers 1896 and 1961.

In terms of a roadmap for today's hearing, I'd like to provide some background on the transactions. Some of it will be repetitive of the February 26th hearing, but I do think it'll be purposes -- I do think it will be helpful for purposes of today's record. And then I can put -- we can put Mr. Meghji on to testify to create the appropriate record and also to hopefully address the United States Trustee's concern. And then we'll also need to have argument on the Miao and Chen objection.

THE COURT: Okay.

MS. RECKLER: Your Honor, I think at the outset, I need to acknowledge that these transactions, like many other in this case, have not been linear and they haven't been without

bumps in the road. We've done our best to work with the creditors committee and the equity committee advisors to keep them up to date as to where things stand. But to level set with where we are, the DIP, the $3 million interim DIP was funded this morning. And the asset purchase agreement was filed this morning as well.

And Mr. Meghji will speak to his confidence and certainty and his beliefs about the ability of the buyer to close the transaction and his comfort level with the financial wherewithal.

I don't think for purposes of today's hearing with some of the objections being resolved, I need to get into why there was a delay with the funding and the signatures being released on the asset purchase agreement. But the good news is those things have now happened, and maybe at a later time, if it ever becomes relevant, those issues will be brought to Your Honor. But I don't think it's needed for today.

THE COURT: Okay.

MS. RECKLER: Taking a step back, we filed this case on February 14th, 2023, so over a year ago now. We've since extended this case as long as possible in our effort to maximize value. We are on our fourth DIP, and the previous three have been satisfied in full.

But we're at the end of the road now. We don't have any options. And without the approval of the DIP and a short

closing of the sale, we will be out of money. And to be direct, it's this transaction or it's Chapter 7.

You'll hear that from Mr. Meghji, and you'll also hear him to speak as to why the sale cannot be consummated at the same price point in Chapter 7, and why Chapter 7 is worse for Sorrento stakeholders. Value will not be maximized in Chapter 7. So we're here today with a package of documents, a proposed sale, a proposed final DIP, and plan modifications, all of which are related.

Starting with the sale, as I previewed at confirmation, we need to close asset sales in order to consummate the plan. Unfortunately, some of the --

THE COURT: Sorry about that.

MS. RECKLER: Oh, no, no problem.

THE COURT: My pen ran out of ink.

MS. RECKLER: It happens to all of us.

THE COURT: Call for emergency backup.

MS. RECKLER: Your Honor, unfortunately, some of the asset sales that we had thought would be consummated at the time when we were at confirmation have fallen through, and Mr. Meghji can speak to that as well. But the good news is the debtors did continue to pursue all available alternatives, and we now have a sale transaction in hand. And it's the only actionable transaction of which we are aware. There is nothing else that exists today.

The proposed sale is a sale of substantially all of the debtors' remaining assets to a newly formed Delaware entity called Vivasor. The buyer is an entity associated with the debtors' CEO, Dr. Henry Ji, and will be funded by a syndicate of investors led by a private investment vehicle owned by a former principal of a leading middle market life sciences-focused investment bank that had raised over $100 million for Sorrento Therapeutics in the last years through private placements, registered direct financing, convertible debt financings, at-the-market shell financings, and a combination of the following. And that client is represented by Mr. Rawlins and Mr. Grogan, and they're here and can speak to that.

The purchase price has five major components. The first is $15.5 million in cash. The second is a $5 million note. The third is a waiver by Dr. Ji of over $400,000 in past due compensation and benefits, plus go-forward compensation and benefits. The fourth is 7 percent equity interest in all purchaser subsidiaries, which will contain the acquired drugs. And lastly, if the purchaser receives $500 million or more in cash from monetizing the acquired assets, then the purchaser owes Sorrento $35 million in cash.

One other noteworthy component of the APA, which I want to talk about, is the Virex option. Under the APA, the buyer has the option to buy Virex, which is a subsidiary of

Sorrento that produces and sells diagnostic testing kits. And that option is for $500,000 if we do not sell Virex to another buyer after 60 days from closing. And as of now, at the plan effective date, Virex would be transferred to the liquidating trust, which would then complete any sales if the sale is not done before the effective date.

The equity committee is looking at a proposed transaction, and you heard about this at the prior hearing, related to NOLs that would require or involve Sorrento, not liquidating trust, but Sorrento keeping Virex instead of it being transferred to the trust. So the equity committee has until the plan effective date --

THE COURT: No, that's the additional time.

MS. RECKLER: -- which will be the sale closing date.

THE COURT: That's going to give them the additional time to see if they can get it. Got it.

MS. RECKLER: Yeah. And Mr. Meghji will speak to how much time that is, but directionally, it's about two to three weeks. It could be a little shorter as of 10 days, but let's call it two to three weeks.

THE COURT: Okay.

MS. RECKLER: And if that happens, and if Virex does remain in Sorrento, and if there is another transaction, then it is possible to -- then the NOLs could be preserved. If the transaction comes forward, we can revisit the issue and

potentially keep Virex in Sorrento for an NOL transaction instead of it being transferred to the trust. That flexibility remains open. And I know that's very important to the equity committee, the creditors committee, and ultimately the debtors, because we believe it would be additive and value maximizing if it indeed can come together.

So approving the sale today, I want to be very clear, does not close the door on that option. And that, again, I believe, and you'll hear from the equity committee, but I do believe that was the key component to resolving their objection today.

And one last note regarding the sale terms, the structure of the sales allows the current equity holders to remain rather than to be canceled. And so preserves the possibility that those shares will become valuable if the assets in the trust, including the interest in the purchaser's subsidiaries, become sufficiently valuable. And time will tell whether or not that happens.

Given the affiliation with Dr. Ji, we are very careful about the process to make sure that negotiations were conducted in good faith and at arm's length. Dr. Ji had no role whatsoever on behalf of the debtors, but was solely on the lender and buyer's side represented by Paul Hastings. The lender and buyer negotiated very hard, and they, at times, often negotiated both directly with the debtor and also with

the creditor's committee. And they indeed have also been in touch frequently with the equity committee.

And throughout these cases, we have also kept the equity committee in the loop and shared drafts of the documents with them. And we have done our best to accommodate comments that we have received, recognizing our leverage and our negotiating position.

The debtors believe that the sale is a valid exercise of their business judgment under Section 363, because it will help us avoid Chapter 7, and it will allow us to consummate the plan and to maximize the value of debtors remaining assets. We believe the sale of plan are substantially better than a conversion because they allow the assets to be sold for substantial value as a going concern, much more than they would be worth if the debtors stop operating.

If consummated timely, they will provide funding for the litigation trust to pursue recoveries for unsecured creditors. And if there's anything remaining, it will go to equity holders. They allow for the greater chance of recovery to equity because they increase the chance that creditors will be paid in full and keep the existing shares in existence. And Mr. Meghji's testimony will speak further to this.

Turning now to the plan modifications, they can be seen at Exhibit 4 at Docket Number at 1995. As part of the sale, the debtors are modifying their confirmed plan so that

shareholders retain their equity interest in Sorrento. But Sorrento's only assets will be a reversionary interest in the liquidating trust. And the liquidating trust recoveries will only revert to Sorrento once creditors are paid in full in cash. Thus, the shares have no value and the shareholders thus receive no recovery under the plan unless and until creditors are paid in full.

The value is no different than the previously confirmed plan where shareholders would receive excess trust recoveries following payment of creditors in full. The only difference, Your Honor, is the mechanism. Excess recoveries will now go to Sorrento for the benefit of shareholders rather than to the shareholders directly from the trust. In either scenario, creditors must be paid in full in cash.

So there's no absolute priority issue and no material adverse changes in treatment and no need to re-solicit. The plan continues to satisfy the confirmation requirements of Section 1122, 1123, and 1129, and we request that the modifications be approved.

And Your Honor, lastly, turning to the DIP. The DIP was approved on an interim basis on the 26th, and that provided $3 million in liquidity to the debtors. The debtors are now seeking final approval, the remaining $2 million of that facility. And as we talked about at the last hearing, the DIP is a bridge to the sale to ensure that the estate has the

liquidity needed to close the sale.

The DIP matures at the end of March, and we intend to satisfy and close the sale by then. And that also features 8 percent interest with no fees, and there is no prepayment penalty. In fact, the DIP doesn't even require the debtors to pay the lender's professional fees unless there's a default.

The proposed collateral for the loan consists of substantially all of the debtors' assets except for certain estate claims that have been excluded, which was an important concession from the perspective of the creditors' committee. And all of that collateral is generally unencumbered other than the interim DIP liens.

As I mentioned at the last hearing, the DIP limits the lender's ability to foreclose on the collateral in the event of a default by requiring the lenders to come out of pocket to pay the cash needed to fund the remaining purchase price if they want to proceed with a foreclosure. So the result of the foreclosure from the estate's perspective is essentially the same as if the sale was consummated, except the lenders can deduct its professional fees from the purchase price in a foreclosure. This was a very important and hard-fought and bargained-for provision because we did not want a lender to come in, fund $5 million, we default for no reason or no fault of our own, but it happens, something happens, and we didn't want them to be able to steal the asset for $5 million,

so we have that protection built in.

The DIP is the best financing available to the estate and it satisfies the requirements of Section 364. The lenders are unwilling to extend financing on an unsecured basis and require a lien on the debtors' property to secure the new loan. And the DIP is a sound exercise of the debtors' business judgment because it provides the debtors with sufficient liquidity to close the sale, which in and of itself is a value-maximizing exercise of business judgment for the reasons that I've mentioned and Mr. Meghji will address.

So taking this all together, in short, the DIP and the sale will help us avoid Chapter 7, it will allow us to consummate the plan, and it will allow us to maximize the value of these assets.

Your Honor, I don't know if others want to make opening statements, but when you're ready, we'd like to present Mr. Meghji's testimony and then turn to argument on the Miao and Chen issues, which we believe are legal arguments and not evidentiary issues.

THE COURT: Okay. Thank you.

MS. RECKLER: Thank you.

THE COURT: Mr. Glenn?

MR. GLENN: Thank you, Your Honor. A few opening remarks.

Throughout this case, the equity committee has tried

to search for value. We have monitored the company's efforts to sell its assets unsuccessfully. We have tried to market them separately ourselves. We have tried to look for financing of our own with mixed results, and up until today, we took Your Honor up on your offer to try to find an alternative transaction. We were negotiating with a third party up through last night. Those efforts were unsuccessful.

We're here today to address that reality. I think a lot of people who are monitoring this case have a lot of questions about how we got to where we are today. We're not here to address those today. We have a lot of unhappy people. When you don't get paid, when your creditors don't get paid, when your equity is facing a dim recovery, obviously, there are a lot of unhappy people. There are mostly individuals, not institutions, and this is a very unfortunate day for them for the most part.

But what we've tried to do, facing the choice today of putting the company -- arguing to Your Honor that the company should be put into liquidation. Really, that's the only alternative. We're pushing forward with this sale with what I'm going to present, offers the shareholders a better possibility of getting something directly.

The proposal, I don't believe Ms. Reckler covered this, we negotiated for a $5 million investment right for existing equity holders to go into this new transaction so they

could invest alongside the new investors. The problem with that $5 million is that it's only available to accredited investors. And I'm sure that most of our existing shareholders are not accredited investors, so that opportunity would not be available to them. We asked and asked and asked to allow the broader shareholder community to invest. We were refused.

So where does that leave us now? We have been searching for this NOL transaction. And we believe, although there are no guarantees, that there are real prospects for that transaction to materialize.

We have an agreement with Mr. Shinderman, which provides for a sharing of the proceeds of that transaction between his trust and between the old equity. So there's an actual possibility that the shareholders can get a piece of this recovery directly.

What I don't want to do at this point is to provide anyone any guarantees. This is going to be a highly structured transaction that's going to involve a variety of components. What we have agreed to is a process over the next few weeks with some of the key terms agreed to that will allow that sharing mechanism to occur.

It's our hope that the transaction will produce cash available for the old shareholders that they will not get directly, but that they will hopefully, and we have to negotiate this with the buyer, have an opportunity to put that

money, which they could not take out of their pockets and put into the new deal, that this money will be a trust fund for those shareholders, so their old equity will have a vested equity interest in the buyer. The buyer has not yet agreed to that.

So all these things need to be negotiated. If we had three more weeks, I'm confident that we could have come to a more concrete agreement on these terms. But once again, as Ms. Reckler told you, the company's run out of money. I think this is the fourth or the fifth time, and this literally is the end.

So to the Court, to the equity holders, we pledge our continuing determination to try to get this deal done. We have encouraged the investor group that we engaged with to keep working in the unlikely event that this deal doesn't close so that someone else will be there and maybe even offer more value. But we, as fiduciaries for the shareholders, were faced with a horrible choice, which was fight this and likely get nothing or come to an agreement with some potential for the shareholders to get something meaningful.

So we look forward to trying to accomplish that, and we look forward to presenting more information to the Court and hopefully the shareholder community so they can better understand what's going on.

THE COURT: Thank you very much.

I'll hear from the committee and then the United States Trustee.

MR. SHINDERMAN: Thank you, Your Honor. Mark Shinderman, Milbank, on behalf of the committee. I'll be very brief.

I want to thank all the estates professionals for being open to possibilities. This was a difficult case because of severe liquidity constraints and products that were in development that were not in the marketplace, so there was no cash flow. So you're trying to raise money against assets that aren't producing revenue. It's a very difficult process.

We didn't always agree. There were lots of fights. It's been a difficult case. But the professionals conducted themselves accordingly. They were commercial, they were reasonable, and they always listened.

And that's why we were able to forge the conclusion and the settlement Mr. Glenn and Ms. Reckler just spoke to. More details on that to come. It's not a done deal. It's an opportunity to negotiate an end game.

Look, nobody should be happy here. Equity invested $600 million, which was all but gone on the day the case commenced. There was less than $5 million in the bank, as you heard testimony previously, right? So the equity was out of the money.

This case was financed on the back of creditors. If

there was an asset, we could have liquidated that asset and paid it to creditors or liquidate that asset and use the cash flow to fund the case. Everybody was hoping to exploit the assets. Everybody was hoping to get to asset sales.

So money that could have otherwise gone to creditors was put back into the estate, creating an opportunity to go to the sales. Unfortunately, as you heard, those sales did not close. So nobody's happy with the result of this case, and nobody should pretend otherwise.

But under the circumstances, this is the best deal available to all constituents at the current time. As the testimony you're about to hear will show, we have two choices: have no funds, convert the case to Chapter 7, or to consummate the sale.

As you heard me here the last time, as I stated last time, the sale has three primary benefits. One, it pays all administrative costs in full. Two, it funds the trust so the trust could do its two functions. One, reconcile claims, and two, prosecute certain causes of action intended to bring money back into the estate. And third, the trust will get residual interest in some of the subsidiaries of the buyer, so that if the buyer successfully exploits these assets, and we hope they do, there'll be some more money for creditors, and if creditors are paid in full, then value for equity.

The settlement with the equity permits possible

monetization of tax attributes in asset of the estate that belongs to the estate. And as Mr. Glenn suggested, there are conditions predicate that are beyond anyone's control that we need to work through. There are financial issues we need to work through. We need to attract a merger partner. But there are things that we will do together to try to maximize value because it would benefit his constituents and mine and the estate as a whole.

Again, Mr. Meghji, the CRO, Latham & Watkins, their financial advisors, M3 and Moelis, our financial advisors, BRG, the equity committee's counsel, and their financial advisors have all been instrumental in getting to this point.

Again, obviously people would like more money. Under the circumstances, this is the best deal available to everybody. And with that, the committee strongly supports this sale, Your Honor.

THE COURT: Thank you.

MR. SHINDERMAN: Thank you.

THE COURT: Let me hear from the committee. I should say the United States Trustee. I apologize.

Ms. Barcomb, good afternoon.

MS. BARCOMB: Good afternoon, Your Honor. Alicia Barcomb on behalf of the United States Trustee.

Your Honor, admittedly, Ms. Reckler addressed many of my talking points for an opening, but I just wanted to clarify

a few things, Your Honor.

THE COURT: Okay.

MS. BARCOMB: First, as Your Honor is aware, the U.S. Trustee did file a limited objection related to the DIP motion that appears at ECF Number 1910. In that limited objection, the U.S. Trustee attempted to address three issues, the first being that the Court should not enter any orders until it rules on the pending venue motion. Second, that but for the payment of professional fees, the DIP was unnecessary. And third, that the debtors did not disclose sufficient information about its forecasted professional fees and the method by which accruals were calculated.

Your Honor, the U.S. Trustee only urges its objection to that last point. And following a very helpful conference with debtors' counsel and its financial advisors, we do understand that the testimony today may provide much needed clarification about the DIP budget and particular line items.

Your Honor, related to the sale, the U.S. Trustee takes no position on the proposed sale here today. One item that I did want to note for the Court, Ms. Reckler did note the debtors' agreement with the U.S. Trustee about the venue language in the proposed DIP order. That came as an agreement to the U.S. Trustee's request for some kind of qualifying language to the venue provisions of the order. I noticed in the proposed order for the sale filed at 1995, that qualifying

language is likewise not there. And so we would just ask that the Court also likewise hold no prejudice against the U.S. Trustee and its prosecution of its venue motion if it orders the sale today.

THE COURT: That's no issue on that from my end.

MS. BARCOMB: Thank you, Your Honor.

THE COURT: Okay, thank you.

Anyone else wish to be heard?

MR. BRYANT: Your Honor, W. Steven Bryant on behalf of China Oncology Focus Limited.

THE COURT: Yes, sir.

MR. BRYANT: Your Honor, China Oncology is the licensee the debtors' counsel referred to. We did file a limited objection that appears in Docket Number 1980. The concern we had was that the license IP would be sold free and clear of the licensee's rights under the license agreement. That concern was resolved in our discussion with purchaser and buyer. The purchaser represented to us that in assuming the license agreement, the parties did negotiate to language, including the language referred to at Paragraph NM. And that resolved our limited objection with the one correction the debtors' counsel referenced in that paragraph.

And so we would withdraw our limited objection at Docket Number 1980.

THE COURT: Thank you.

MR. BRYANT: Thank you, Your Honor.

THE COURT: Anyone else? Going once.

Mr. Kirby, I can't hear you. You may need to hit "five star" or maybe I need to -- maybe I mute myself all the time. Maybe, it maybe it too. Now, can you hit "five star" one more time, Mr. Kirby?

UNIDENTIFIED: (Indiscernible) object.

THE COURT: Mr. Kirby? Yeah, I still can't hear you. Well, oh, let's see.

You're on an 832 number and you sound like you're outside. I'm asking, please place your phone on mute.

Mr. Kirby, is that you? No. Give me a second.

MR. SHINDERMAN: Your Honor, you may want to suggest to Mr. Kirby that he takes off his headset and he just tries the phone directly.

THE COURT: Well, the problem is I don't think I've unmuted his line. Thanks, though. Let's see, I'm just unmuting him. Mr. Kirby, can you hear me? He may not have dialed in. No. Hold on a second. I just got something here. Mr. Kirby, is that you? Well, it looks like he's dialing. Mr. Kirby, hold on. If you can hit "five star", let's see if I can find you. Ah, I think I found you. Wait.

MR. KIRBY: Hear me?

THE COURT: Mr. Kirby?

MR. KIRBY: Can you hear me?

THE COURT: Touchdown. Okay, we got you.

MR. KIRBY: Your Honor, I apologize for that.

THE COURT: No worries.

MR. KIRBY: I presume when it happens, it's always my fault. But it always seems to happen when I'm trying to appear in court.

I am appearing in the case, Dean Kirby, Franklin Soto Leeds, for Doctors Chen and Miao. And I'm speaking, of course, about one little corner of this complex and important transaction. And I understand that and I understand the importance of the transaction to all creditors.

But it's also important to my clients, who are individual people, and are involved in a complex transaction that's hard to even talk about without taking a little time. And I'm asking the Court's patience about that, even though we have a crowd of expensive lawyers who are going to sit here and listen to me for as long as the Court allows me to speak.

The Exhibit 1, which is on our list of exhibits, is a copy of a complaint that was filed by the debtor, Sorrento Therapeutics, and it alleges the validity of and seeks to enforce a merger agreement, what the parties call in that litigation a 2016 merger agreement. And the merger agreement is part of that exhibit, it's Exhibit H, starting at -- H, as in horse, starting at PDF Page 380, and amended in one small particular at Exhibit I at Page 465.

And what is important to refer to that merger agreement, because the crux of this, as far as my clients are concerned, is what is being sold and free and clear of what claims. The sale motion refers only, from my client's point of view, to the sale of stock of a subsidiary of the debtor called Concortis Biosystems Corp. And Exhibit A to the motion, that's Page 41 of the debtors' motion, lists Concortis Inc. as a subsidiary of Concortis Biosystems Corp. Concortis Biosystems is not a debtor in bankruptcy.

Drs. Chen and Miao were sued in California Superior Court by both the debtors and, yes, Sorrento Pharmaceuticals, and by the non-debtor, Concortis Biosystems, as co-plaintiffs. And we've designated a copy of that complaint as Exhibit 1, as I said. And we believe that the complaint's a document that the Court can take judicial notice of for the limited purpose of establishing that this claim for breach of the merger agreement was made. And it's offered here on that basis.

I don't anticipate the counsel for the debtor will disagree with my recital of one or two relevant terms of that merger agreement. If they're not willing to stipulate, we can call Dr. Chen as a witness to authenticate it.

If you open the Exhibit 1 PDF at Page 380, on Page 1, the first thing you notice is that the debtor, Sorrento Therapeutics, is not a party to the merger agreement. Sorrento Biosystems is named, or excuse me, Concortis Biosystems is

named in the agreement as the quote/unquote "parent". And as stated in the concluding paragraph on the first page of the merger agreement, what happened is that a merger subsidiary of the parent, that is, a subsidiary of Concortis Biosystems, merged with Concortis Inc., which is my clients' corporation. And Concortis Inc. was a surviving company as a subsidiary of Concortis Biosystems, just like the debtors' motion says. The debtors' motion shows it to be a subsidiary of Concortis Biosystems.

Now, so a copy of the Chen Miao cross-complaint filed in the state court action is designated as well as an exhibit. And anyway, it's just simply -- well, excuse me, I'm sorry. The cross-complaint is an exhibit to the proof of claim that was filed on behalf of Chen and Miao, and that those two claims respectively are marked as exhibits, and solely to show the nature of the claims and interests of Chen and Miao.

The debtor, Sorrento Therapeutics, does not claim to own the stock of Concortis Inc. That stock is an asset of non-debtor Concortis Biosystems. And you can read in the merger agreement or in the proof of claim, again, if deemed necessary, via the testimony of Dr. Chen, that he and Dr. Miao and the remaining small group of minority shareholders of Concortis gave up 100 percent of the Concortis Inc.'s stock and were to receive in exchange 30 percent, later amended to 20 percent, of the stock in Concortis Biosystems. Dr. Chen can testify, if

necessary, that he never actually received the share certificates.

If the merger agreement is valid, as the debtor contends, then the debtor owns 80 percent of the stock of Concortis Inc., not 100 percent. And Chen and Miao are entitled, unless they breach the agreement, to 20 percent of that stock. So at a minimum, I think this order needs to be made clear that 80 percent of the stock is being sold, or at least that the sale is whatever rights the debtor has in that stock of Concortis Biosystems.

Now, the debtor claims the right to sell the Concortis Inc. stock, I think, free and clear of any disputed rights that Chen and Miao have. The Court should not enter an order that says that, and for two independent reasons. First, as I explained, I mean, Concortis Inc. is not a subsidiary of the debtor. If the merger agreement is valid, it's a subsidiary of the debtors' subsidiary, Concortis Biosystems, which is not in bankruptcy.

Second, you know, if the merger agreement is valid, Chen and Miao own 20 percent of the stock of Concortis Biosystems. And that's a claim of ownership. And we've cited cases which stand for the proposition that you can't sell free and clear of a claim of ownership without first adjudicating that ownership dispute. The claim of ownership is in limbo right now, because the state court litigation is not -- is

unresolved. And I note in the opposition I filed that early in the case Chen and Miao moved for a modification of the stay to allow that litigation to go forward. And that motion was denied.

So you know, within the last hour, we were served with the final version of the proposed order. And I anticipate that if this order is entered in its current form, the debtor may claim down the road that it affects my clients' rights to continue the state court litigation to determine rescission claims against the non-debtor, Concortis Biosystems, as to the ownership of stock of the non-debtor subsidiary, Concortis Inc.

Now, I'm available immediately today or over the weekend to meet and confer with counsel on some language that makes clear that that is not what's being sold. The stock in Concortis Inc. is not being sold. And I think that that's important to put in the order because of the substantial potential for misunderstanding, shall we say, about the effect of the order.

Now, as to the rest of it, Section 3.8 of the merger agreement is quoted in our opposition, one moment, and it says restricted securities. And it says the key stockholder, which the debtor notes in its reply is Chen and Miao, understand that the shares of the parent common stock, that is the shares of Concortis Biosystems, have not been and will not be registered under the Securities Act. And it goes on to say that Chen and

Miao must hold the shares of the parent common stock for that reason indefinitely unless they're registered or unless an exemption applies.

I have a feeling that this may affect many of these subsidiaries, but I don't know that and I'm not concerned with that. But the debtor in its reply doesn't tell us what exemption they claim applies, if that's their claim. They haven't given us a copy of share certificates or in any way established that this stock in Concortis Biosystems that they're selling is not a restricted security.

So onward to the disclosure of benefits. I want to briefly address the arguments made in the debtors' reply about the failure to disclose in the motion, which was served on the ECF creditors, at least, what Dr. Ji personally stands to gain in relation to the sale.

THE COURT: Wait, wait.

MR. KIRBY: The debtor --

THE COURT: Mr. Kirby, why don't we just wait? Sounds like you're doing an intro and closing. Maybe we can just do everything at the end once I hear all the evidence and then we can see if it's still an issue.

MR. KIRBY: Certainly, Your Honor. Thank you.

THE COURT: Okay.

Ms. Reckler? Oh, Mr. Harris, I apologize.

MR. HARRIS: Thank you, Your Honor. We're ready to

call our one and only witness, which is Mr. Meghji, our CRO

THE COURT: Okay, let's call him up. Mr. Meghji, why don't you come up?

MR. CULBERSON: Wait, wait, wait, wait.

THE COURT: I'm sorry. Who's speaking?

MR. CULBERSON: This is Tim Culbertson.

THE COURT: Oh.

MR. CULBERSON: I wasn't called on.

THE COURT: Sorry, Mr. Culbertson. I apologize. Did you file an --

MR. CULBERSON: No, that's okay, Your Honor.

THE COURT: Go ahead.

MR. CULBERSON: I will be brief, but I do want to get on the record since I wasn't party to the conversation between the U.S. Trustee and the lawyers this morning. I don't waive my objection to the motion to transfer venue. I think it should be heard before this proceeding. There is absolutely now, as the U.S. Trustee did last night in its reply, clearly shows there's no asset in Texas. There's no principal place of business in Texas. There was and never and never will be a basis for this Court to have venue.

And therefore, I believe this hearing should not be going forward. And there's no reason why we couldn't have the venue issue resolved before this hearing. So I just want to make sure that that's on the record.

THE COURT: Absolutely. And I apologize, Mr. Culbertson. Your objection is duly noted.

MR. CULBERSON: Okay. Thank you, Your Honor.

THE COURT: Okay. Mr. Meghji, come on up.

Are there going to be any docs shown or anything? Do I have to give permission?

MR. HARRIS: Yes. Could you let Mr. Gordon be our presenter?

THE COURT: Alrighty. Just a second.

MR. HARRIS: Thank you, Your Honor.

THE COURT: And then I'll swear the witness in. Mr. Gordon, where are you? Let's see. Mr. Gordon, where -- oh, there you are. Thank you. Okay.

Mr. Meghji, can you please raise your right hand?

MOHSIN MEGHJI, DEBTORS' WITNESS, SWORN

THE COURT: Okay. Let the record reflect the witness has been properly sworn in. You may continue.

DIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Meghji, for the record, could you state your title on behalf of the debtors?

A I'm the chief restructuring officer of the -- of the -- of the debtors.

Q Okay. And before Dr. Ji came forward with the current proposed transaction that's, you know, before the Court today,

were the debtors recently contemplating a conversion to Chapter 7?

A Yes, we were.

Q And why is that?

A Because, really, for three reasons. One, we felt that we had, at that point, pretty much exhausted the sales effort and marketing process. Two, we were administratively insolvent. We had a little under $5 million of cash a couple weeks ago, and $12 million of -- of administrative claims. And essentially, all -- all of -- all of those efforts had -- had -- and three, the unsecured creditors committee was really pushing us to strongly consider that, given that it looked like there would not be sort of additional capital or sales offers coming.

Q And does the transaction that's before the Court today, does that change the debtors' expectation that need to convert?

A Yes, absolutely.

Q And just can you describe generally the terms of the transaction?

A Yes. I think that this transaction will allow us to go effective with the plan that was confirmed in November. We get $15 and a half million of cash consideration, of which three has been funded this morning, five -- an additional $5 million in the form of a note two years from now, and then future consideration if Nucro does well in the amount of $35 million

when the enterprise value exceeds $500 million, and a 7 percent ownership interest in any operating investments that Nucro makes going forward.

Q So what would you describe as the benefits to the estate of the transaction?

A Well, first, it -- it deals with the administrative insolvency and allows the plan to go effective. It also leaves some cash to fund the litigation trust or the liquidation trust that's going to be set up as part of the plan of reorganization and leaves the, at least the potential or hope for upside for creditors and or equity holders in future.

Q So if the trust is eventually able to pay creditors in full, where does the residual value go?

A It goes to the -- to Sorrento, which will be preserved for the benefit of Sorrento shareholders.

Q So to be clear, under the new structure that's enabled by the transaction, are the Sorrento equity shares being canceled?

A No.

Q And are there any other potential benefits to existing shareholders from this transaction?

A I think as Mr. Glenn indicated today, they will have the ability to participate in Nucro as investors. And I think, you know, I'm hopeful that if -- if the efforts that -- that he also described today with the NOL process for a transaction materializes there, there could be additional upside from that.

Q And what safeguards are there in place, given the fact that Dr. Ji is on or was in part of the buyer group?
A Well, he has not been part of the, you know, while he's been, you know, managing the operations, or -- or -- and been actively involved in that day-to-day operations, he has not been involved in any of the sort of non-operating issues. The board had turned those responsibilities over to me fairly early in the case, I think sometime in March. So I've been -- and we've kept them out of that decision-making process.
Q And has Dr. Ji ever interfered with any sale effort during the course of bankruptcy?
A Not to my knowledge.
Q And to be clear, the debtors made other efforts to sell these particular assets during the bankruptcy?
A Yes, all the way through from March of last year through now.
Q Okay. And for these assets, have there been any actionable offers other than the one before the Court today?
A No.
Q And did the debtors have financing that would allow them to instead develop these assets rather than sell them?
A No.
Q And what's the outside closing date for the transaction?
A March 31st.
Q And if the transaction closes on March 31st, how much cash

do you expect will be left for the liquidating trust?
A Approximately a couple -- approximately two million bucks or slightly under that. And if it closes earlier than that, then we could -- there could be a little bit more cash left.
Q Okay. And has the buyer indicated that it might be able to close in as early as 10 days?
A Yes, they have.
Q And do the debtors believe that the purchasers have the ability to close?
A Yes.
Q What's your basis for that belief?
A So over the past two days, if not longer, but certainly intensively over the past two days, we have been very engaged with Dr. Ji and his counsel, Mr. Rawlins, who's -- who's on by Zoom here. And also in some case -- in some cases, I've had conversations with Dr. Ji's investors. So I think there is a stock purchase agreement backing the buyer. And I'm comfortable based on the representations that Dr. Ji and Mr. Rawlins have made to me that they can go ahead and close this deal.
Q Just to be clear, what is the alternative to this sale for the debtors?
A Well, there's no other sale or financing alternative. So if the sale doesn't happen, we would be filing for Chapter 7.
Q And what effect would liquidation have on recoveries to

the estate's constituents?
A I think very negative.
Q All right, now let's just talk briefly about the DIP. For the record, what are the terms of the DIP at a high level?
A So the DIP bears PIK interest, payment in kind interest, a rate of 8 percent per annum. There are no fees associated with it unless we, the debtors, default on the DIP. And there is no prepayment penalties associated with the -- with the DIP as well.
Q And was the DIP lender willing to lend on an unsecured basis?
A No.
Q Is there any other potential lender that the DIPs are aware -- that the debtors are aware of?
A No.
Q And do the debtors have funding to close the sale transaction, you know, through March 31 without the DIP?
A No.
Q Okay.
MR. HARRIS: Could we display the DIP budget, which is Debtors' Exhibit 8? Okay. And if you go to the next page, okay.
BY MR. HARRIS:
Q And then we're going to look at the lines under cash receipts at the top. Do you see that there is listed a -- if

you scroll down a little to see the --
A I see the dates.
Q -- the periods, also the dates, yeah. Yeah, there it is. Do you see there's a 300,000 receipt that was budgeted to be received on February, the week of February 18th?
A Yes.
Q Okay. Have the debtors received that $300,000 payment yet?
A No, we're still -- we're still chasing that. We do expect to receive it, but it hasn't yet come in.
Q Okay. And then if you look two periods over the week of March 3rd, you see a $1.9 million payment that was expected to be received?
A Correct. That was the AIG insurance settlement.
Q Okay. And has that payment been received yet?
A No, we are now expecting to get that on Monday or Tuesday.
Q Okay. So excluding the interim DIP draw that was recently received, how much cash do the debtors have today?
A About -- we have 1.8 or 1.9 million in the operating account, and we have 1.8 or so in the car ride account.
Q And how do the debtors intend to use the existing cash and the DIP draws?
A To -- to continue to fund, as we show here, the operating disbursements and professional payments that we have.
Q Okay. And I want to focus on a few specific line items.

How are the disbursements for retained professionals calculated?

A So through a combination, the -- the process we had set up from the inception -- inception of the case is that on a weekly basis, every professional in the case reports their fees or their estimated fees for that week to -- to us, to one of the M3 team. That's tracked, maintained, and -- and -- and calculated. And then, obviously, there are monthly filings by the professionals with the Court.

Q Okay. And how are the disbursements for ordinary course professionals calculated? Is it the same process?

A Well, I mean, we -- we created a member of my team, and working very closely with Sorrento management, prepared a very detailed budget, which has been maintained and updated on a weekly basis from the inception of the case to determine the -- all of the kind of operating disbursements, as well as the operating, sort of the ordinary course professionals fees.

Q All right, one more line item. If we can scroll down to the bottom, there's a line item. It's called professional fee accruals unpaid. Do you see that line item, sir?

A Yes.

Q Okay. How was the professional fee accruals unpaid calculated?

A Well, that's based on the -- the fees that have been, you know, incurred and estimated and have not been paid by the

debtor.
Q All right, thank you.
MR. HARRIS: We can take the budget down.
BY MR. HARRIS:
Q Briefly about the default terms in the DIP. What happens if the debtors default under the DIP?
A If the -- if the debtors default under the DIP, then I think, you know, we'd be responsible for any professional fees incurred by the DIP lender and the buyer. But importantly, they don't -- the DIP lender does not have a right to foreclose on our assets unless they pay the remainder of the consideration that's required under the sale agreement.
Q Okay. And other than the 400 -- $40,000 of interest, does the DIP cost the debtors anything if the transaction closes?
A You know, it's less than $40,000, not 440. I --
Q 40,000, sorry. All right. So other than the $40,000 of interest, does it -- would --
A No.
Q Okay.
A There's no other cost.
Q Likewise, if someone else comes around with an alternative transaction or places the DIP, would it cost the debtors anything?
A No, there's no prepayment penalty.
Q Okay.

MR. HARRIS: No further questions.

THE COURT: Anyone in the courtroom who supports the relief request that have any questions for the witness? Anyone in the courtroom -- else in the courtroom have any questions for the witness? Ms. Barcomb.

MS. BARCOMB: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. BARCOMB:

Q Good afternoon, Mr. Meghji.

A Good afternoon.

Q My name is Alicia Barcomb. I'm a trial attorney with the United States Trustee's Office. I wanted to ask you some additional questions about the professional fee line items in the DIP budget.

MR. BARCOMB: Mr. Gordon, could I trouble you to put that back on the screen? Thank you. Mr. Gordon, could you please scroll up to where it displays -- yes, thank you. Great.

BY MS. BARCOMB:

Q Mr. Meghji, regarding the total retained professionals line item in the budget, do you see that under other disbursements?

A Yes.

Q Okay. I believe you testified, and I may be summarizing your testimony, that essentially historical averages from

weekly receipts of emails from the retained professionals were calculated and these numbers were forecasted in the budget. Do I have that right?

A No.

Q Okay. Could you please describe your calculation of the forecasted budget line item for total -- for retained professionals?

A Yeah, so it wasn't based on just a straight historical average. I think we -- we -- we looked at what needed to be done between now and March 31st, spoke to each of the professionals, and -- and sort of came up with a budget on that basis.

Q Okay. And for the ordinary course professionals, did you also speak with those professionals about the forecast?

A I think with the ordinary course professionals, it's been probably more consistent with how you described it in your question, which is -- it's ordinary course. It's sort of relatively consistent historically, although it's not the same every week. It's the same sort of pattern on a weekly, monthly, quarterly basis. So we extrapolated that based on what's going on and what activities are going on. But one of my colleagues, Mr. Greenhaus, maintains that has a very good handle on all of that.

Q Mr. Meghji, did the forecast for retained professionals, did it include the terms of the interim compensation

procedures?
A Can you help me with what that means?
Q Yes, I will be more specific. Thank you. Did the forecasted amounts include a recognition of the applicable objection period based on the interim compensation procedures?
A So just to clarify in terms of 80 percent of being -- it being paid as opposed to the full amount?
Q Mr. Meghji, that is one of the terms of the interim compensation procedures, but also the noticing requirements and then a 14-day objection period. Did the forecast contemplate those terms?
A Yes, I believe it does. Absolutely.
Q Thank you, Mr. Meghji.

MS. BARCOMB: No further questions, Your Honor.

THE COURT: Thank you. Anyone else?

Okay, let's see, anyone on the line who filed an objection wish to have any questions for this witness?

MR. KIRBY: Yes, Your Honor.

THE COURT: Okay. Just state your name for the record again.

MR. KIRBY: Am I being heard now?

THE COURT: We can hear you, Mr. Kirby.

MR. KIRBY: All right.

CROSS-EXAMINATION

BY MR. KIRBY:

Q Dr. Meghji, when you negotiated with the purchaser, what persons did you negotiate with?

A With the purchaser for this agreement?

THE COURT: Mr. Meghji, can you just make sure that your mic is just twisted just so we can hear you a little bit better?

THE WITNESS: Sorry.

THE COURT: No, no worries.

THE WITNESS: Okay. Can -- is it better?

THE COURT: Much better for me. Can you repeat your answer -- Mr. Kirby, can you ask your question again and let's get an answer from the witness?

MR. KIRBY: Certainly.

BY MR. KIRBY:

Q When you negotiated with the purchaser, what persons did you negotiate with?

A With Dr. Ji and with his counsel, Mr. Rawlins, for the most part. And I'd probably say it was more with his counsel than Dr. Ji.

Q Did you have any contact with Dr. Ji's proposed equity partner when you were negotiating this?

A Yes. Not -- not -- now, I just want to be clear. Not specifically on the negotiation of the terms, but as I -- I -- I think I testified earlier, over the past couple of days, I've had several discussions and -- and several of my colleagues

have and my advisors have as well with the principals and some of the investors backing Dr. Ji in -- in relation --

Q And --

A -- to timing of funding, when the funds are coming in, the DIP proceeds, et cetera.

Q All right. Did you negotiate the actual terms of the purchase directly with the proposed equity partner?

A I did not personally do that directly with the equity partner. This -- the agreement was negotiated between -- I may have this slightly off, but between January 22nd, which is when we first received a term sheet from Dr. Ji and, you know, when we filed it a couple weeks ago. So it was a long process with the involvement of Latham, Moelis, M3, the creditors committee was actively -- Mr. Shinderman and BRG were actively involved in that process. So it was a fairly involved process. It wasn't me and Dr. Ji negotiating.

Q Now, in negotiating the purchase, did you understand that it was important to the purchaser that Dr. Ji continue on in the business?

A Well, Dr. Ji is the buyer. So yeah.

Q Yeah. So --

A So -- so yes, they -- they wouldn't have backed them if they didn't think so, but I -- I -- that's my understanding.

Q And to your knowledge, were discussions with Dr. Ji and his proposed equity partners going on at the same time that you

were negotiating the purchase itself?
A I mean, I assume so.
Q And did you participate at all in the negotiations between Dr. Ji and his new equity partners in the purchaser entity?
A No, I -- I -- I am -- I, as you know, I'm the CRO of the sellers. So I'm not involved with the purchaser.
Q Do you know what benefits Dr. Ji proposed as a condition to his continued involvement in business?
MR. SHINDERMAN: Objection, Your Honor. Calls for speculation.
THE COURT: Sustained. It calls for speculation.
BY MR. KIRBY:
Q Did anyone tell you, sir, what benefits Dr. Ji proposed as a condition to his involvement?
A No.
Q Did anyone tell you what the equity partner offered to him in order to obtain his involvement?
A Sir, I have no involvement or knowledge of any of the -- the discussions between Dr. Ji and his investors. I -- you can ask me that 10 different ways, but I -- I just don't know.
Q And so today, as you sit here, do you know the terms under which Dr. Ji agreed to participate in the purchaser entity?
A No.
MR. KIRBY: I have nothing further, Your Honor. Thank you.

THE COURT: Thank you very much.

Anyone else have any questions who filed an objection?

Okay, Mr. Meghji, thank you very much.

THE WITNESS: Thank you.

(Witness excused)

MR. HARRIS: Your Honor, the only other evidentiary matter on behalf of the debtors is we'd move into admission Exhibit 8, and that would close our evidence.

THE COURT: Can you tell me the docket number?

MR. HARRIS: Oh, it is 1974-8.

THE COURT: 1974-8? Any objection to the admission of 1974-8? Okay, it's admitted.

(ECF Number 1974-8 admitted into evidence)

MR. HARRIS: And that closes our evidence.

THE COURT: Okay, let me -- any additional evidence from any party moving in support of the relief request? Any additional documents? Anyone who opposes the relief requested or objecting to the relief requested, any evidence that the parties seek to submit at this time?

MR. KIRBY: Your Honor, is somebody hearing me?

THE COURT: Yes.

MR. KIRBY: All right. I would like to offer our Exhibits 1 through 5 that are listed in our exhibit list. Exhibit 1 is a copy of the state court complaint filed by the

debtor. I've already told you why I think that judicial notice can be taken of that, and it is the debtors' assertion of the validity of this merger agreement and the merger agreements attached to it. I can call Dr. Miao to authenticate that, but I don't believe it should be necessary.

THE COURT: All right. Let me just ask debtors' counsel here. Mr. Harris, 1985 Exhibits 1 through -- you said 1 through 4 or 1 through 5, Mr. Kirby?

MR. KIRBY: I believe it's 1 through 5.

THE COURT: 1 through 5. Any objection to 1, 2, 3, 4, or 5?

MR. HARRIS: We have no objection. I think the document number is 1976.

THE COURT: I'm looking at 1985. Maybe I --

MR. KIRBY: Your Honor, the --

THE COURT: No, no, no. It's 1976. I'm looking at the wrong doc here. You're right. I'm wrong.

MR. KIRBY: Your Honor --

THE COURT: Go ahead.

MR. KIRBY: I'm sorry to interrupt. We saw -- we filed an exhibit list, and then we saw other people filing them on a court form and actually attaching the exhibit, so we went ahead and did that and filed an amended one a couple of days ago, so --

THE COURT: Oh.

MR. KIRBY: That's --

THE COURT: We're all right.

MR. HARRIS: Still no objection. Yes.

THE COURT: Any objection to 1 through 5?

MR. HARRIS: No, Your Honor.

THE COURT: 1985-1 through -5 are admitted.

(ECF Numbers 1985-1 through 1985-5 admitted into evidence)

THE COURT: 1 is the complaint.

MR. KIRBY: Thank you, Your Honor.

THE COURT: 2 is the proof of claim number 26 filed by Miao. 3 is a proof of claim 27 filed by Chen. 4 is the Scintilla Pharmaceuticals petition. 5 is an operating report dated Docket 1947 in this case. Okay.

Alrighty. Let us proceed then to argument. I'll consider the record, then, the evidentiary record closed.

MR. GORDON: Good afternoon, Your Honor. Jonathan Gordon of Latham & Watkins on behalf of the debtors.

The claimant's main argument is that the sales should not be free and clear of their claim to rescind a 2016 contract under which they transferred the Concortis assets to Sorrento. Their Exhibit Number 2, which is a proof of claim, as well as Exhibit Number 3, attaches the complaint, and Pages 23 to 24 showed the cause of action for the rescission claim. That rescission claim is against Sorrento, the debtor, and Concortis Biosystems.

They seem to say that the sale cannot be free and clear because Biosystems is not a debtor, but Biosystems is an asset of the debtor, and this is no different than a lien on or a claim against a piece of land that is owned by the debtor.

Our response to the objection is at Docket Number 1983, and as our response explains, this issue is squarely answered by both the Code and rescission-related case law, both inside and outside of bankruptcy.

Starting with the Code, 363(f)(4) allows a debtor to sell free and clear of a claim if there's a bona fide dispute over it. That is clearly met here, and I don't think there's a dispute that there is a dispute. The parties have been litigating this rescission claim since the summer of 2018, and so (f)(4) is met.

(f)(5) is also met. (f)(5) says a debtor can sell free and clear if the claimant could be compelled to accept money satisfaction of such claim. A number of cases going all the way up to the Supreme Court have explained that rescissionary monetary damages are available to claimants if rescission is no longer available. Those damages serve as a substitute for or satisfaction of rescission. Those cases are in our reply, and so (f)(5) is met too.

The claimant's response to all this is that 363(f) only applies to estate property. Again, Biosystems is estate property. It is an asset of the debtor. And because there's a

rescission claim that this Concortis stock is purportedly not estate property, that argument fails.

Turning again to the case law, we cite a number of cases holding that a rescission claim inherently assumes that the contract was valid, that the assets in question were transferred. That's clear under the cases, and that means this is estate property.

Indeed, the claimants here even admit as much in their objection. In Paragraph 3, they say that the assets, quote, "were fraudulently acquired", end quote, by Sorrento. The parties can and do dispute the fraudulent piece of that, but the claimants admit that Sorrento acquired the assets.

And they do it again later in their objection. In Paragraph 18, they say they want to, quote, "regain ownership", end quote, of the assets. Again, they are admitting that they lost ownership to Sorrento.

And if you want to see how all this applies in the bankruptcy context, there's a case for that too. That's the Fillion case from the Seventh Circuit that we cited in our reply, 181 F.3d 859. There, the debtor was selling real estate free and clear through the plan, and there is an objection based on a claim to rescind that property. The Court said the Code explicitly authorized the sale free and clear, in quotes, "an objection based on merely the existence of the claim of rescission could not be successful", end quote.

All of these cases support the sale being free and clear. On the other hand, none of the cases cited by the claimants are relevant because they do not involve a rescission claim. We distinguish all of them in our reply, but for example, one is about consignment. One is about adverse possession. None of them are about rescission.

And not only is the debtors' position supported by the case law, but it makes good sense too, which takes us full circle back to the Code.

I'm going to paraphrase what Section 510(b) basically says that you don't get to jump ahead in the priority line just because you asserted a claim for rescission. For example, a shareholder's equity interests are junior to creditor claims. We all know and understand that. And the shareholder doesn't get to just allege some kind of rescission or fraud claim with respect to that equity to turn itself into a creditor and jump ahead in line.

That's essentially what the claimants here are trying to do. They're general, unsecured, litigation claimants. That's even what their proofs of claims say. Those claims are now in evidence. Yet they're trying to jump ahead of other unsecured creditors by arguing that their rescission and fraud claim gives them some kind of secured property right that attached to the assets and survives a free and clear sale. That doesn't comply with the Code or the case law and the

argument should be overruled.

As for the rest of the arguments and the objection, I'll address them mostly briefly and then we'll otherwise rely on the brief.

THE COURT: So explain to me what you think the lawsuit -- what's being alleged in the lawsuit. Just give me just some pure understanding. The complaint is in evidence. What's your understanding of what's being alleged and what's the dispute, the legal dispute in the lawsuit?

MR. GORDON: My understanding is the litigation is about rescinding the merger contract. The claim is against Sorrento, the debtor, and Concortis Biosystems, the wholly owned subsidiary of the debtor to rescind the contracts. Really, it's a dispute about consideration. I don't think there's even really a dispute that the parties intended to do some kind of transfer and I don't think anyone's really disputing the assets that were transferred. It's all about consideration, which just goes back to the fact that money damages are available to satisfy that claim.

THE COURT: Okay, thank you.

MR. GORDON: As for the rest of the arguments, again, first that the merger agreement has transfer restrictions prohibiting the sale. I think that's a fundamental misreading of a fairly boilerplate securities restriction and does not say what the claimants think it does. In fact, and the claimants

even put this in their objection, the shareholder that the restriction is referring to is Chen and Miao, is not Sorrento.

Second, that the debtors have not adequately disclosed Dr. Ji's equity in the buyer. We have disclosed multiple times in the brief, in argument here, at the previous hearing, Dr. Ji is getting equity. He will be involved. That amount of equity is still being determined as other parties are investing in the buyer, but the exact number is irrelevant. We are acknowledging and admit this is an insider deal. Whether Dr. Ji gets 1 percent or 100 percent, we have treated this as a fully insider deal that satisfies the fairness test for that. The price and the process were entirely fair and the exact amount of Dr. Ji's equity does not change that.

Third, that the claimants should be adequately protected by having their rescission rights continue in the assets post-sale. That's really just another way of saying the sale should not be free and clear, and that fails for everything I talked about earlier.

Fourth, that the plan modifications need to be pre-solicited. As Ms. Reckler explained, they are simply mechanical. They do not change the value of the treatment of any claims. They are not material or adverse.

Fifth, that the modified claim violates the absolute priority rule. Again, shareholders are not getting any value until creditors are paid in full.

And sixth, to the extent it's still being pursued, that emergency consideration is not appropriate. We filed the motion 18 days ago. We're very close to regular notice. Emergency consideration is appropriate for all the reasons Mr. Meghji testified to today and at the prior hearing when the Court set the issue for today.

So unless the Court has any further questions, we would ask that the objection be overruled.

THE COURT: Thank you.

Anyone else in the courtroom wish to be heard?

Okay. Mr. Kirby, why don't I turn things over to you, sir?

MR. KIRBY: Have I just been called upon?

THE COURT: Yes, just for any --

MR. KIRBY: All right. Thank you.

THE COURT: -- closing arguments that you wish to make, sir.

MR. KIRBY: Thank you very much. First, the Court asked counsel what was the basis for the rescission, and I want to address that very briefly. It's set out, of course, in that cross-complaint that is now in evidence. But Dr. Ji and Dr. Miao owned a corporation that had a business that was given to Concortis Biosystems and they had received nothing in return, not even the stock that they were promised.

Now, why? Well, one reason is that this transaction

was orchestrated by Counsel Paul Hastings. Paul Hastings represented Sorrento Therapeutics and Concortis Biosystems. And Chen Miao thought that they also represented them. They did not have separate counsel in relation to that very important to them agreement because they believed that Paul Hastings was looking out for them that's perhaps minute, but understandable.

THE COURT: Counsel, you're arguing stuff that's not in the record anymore. So I going to -- I gave everyone an opportunity to argue within the record. Now, unless you're going to argue stuff within the record, I'm going to give you an opportunity to do so. But I've got to limit you to that just to be fair to everyone.

MR. KIRBY: These claims are set forth in great detail in the lawsuit that is attached to the proof of claim that has been admitted into evidence.

THE COURT: Okay.

MR. KIRBY: And even looking at the cross-complaint, you'll see that Paul Hastings is a co-defendant. And my client has been practically prevented from pursuing that lawsuit as well because of the automatic stay and how the Court deals with those situations where one of several defendants files a bankruptcy petition.

So they do have rescission rights. They were represented by counsel who didn't disclose to them as the

complaint alleges. And the proof of claim is prima facie evidence of the validity of the claim that they weren't protected.

And they weren't protected. And that became obvious when the merger agreement was breached and they had no practical recourse. They didn't even, as I said, get the stock that the merger agreement says they were supposed to be issued. And there were, of course, allegations of fraud in the inducement by both sides that I don't need, I think, to go into detail about.

So that aside, I want to address what counsel argued. He made a number of statements. And I think I'm quoting, this is estate property. This asset. What is estate property? What is the asset? What is being sold within the four corners of that agreement attached to their motion is the stock in Concortis Biosystems. They're subsidiary.

Sorrento, they're saying, well, they're suing to rescind as to Sorrento. Why as to Sorrento? Sorrento did not sign that agreement. It wasn't a party to that agreement. Now, yes, I mean, both Sorrento and Concortis Biosystems are parties to the litigation, but they are not seeking to sell the stock of Concortis Inc. And it is Concortis Inc. that our client contends should not be a subsidiary of Concortis Biosystems. They are being sued, Concortis Biosystems, to rescind that transaction, which they were a party to, the non-

debtor was a party to. So I don't understand rescind or from Sorrento Therapeutics. It doesn't make any sense.

The stock that is in dispute is the stock in Concortis Inc., which is a non-bankrupt subsidiary of a non-bankrupt subsidiary of the debtor. So these arguments about selling free and clear of rescission rights are in some ways irrelevant. This order should not be used to bar my clients from asserting their rights against Concortis Biosystems to, for one thing, get the 20 percent of the stock that they were promised, if they haven't breached the agreement, and two, to exercise rescission rights to get that stock in Concortis Inc. back.

As to the remainder, on restricted securities, I just heard counsel just basically say, you don't understand enough to know what this means. I quoted the passage in my papers. I read it again in argument. If that isn't clear, then I can't help the Court any further than that.

As to disclosure, and this is where I started to argue and the Court kindly asked me to wait until now. There is no disclosure in this motion and in the evidence that's been presented of what Dr. Ji personally stands to gain in relation to this sale. And what he stands to gain obviously affects the purchase price that was obtained. Obviously, if the purchaser is going to grant Dr. Ji equity rights in all of these businesses that are being transferred, what percent? The

creditors are getting 7 percent. I wonder what he's getting. There's no way to know that.

Now, you know, the debtor admits in the reply that this is an insider deal. And just saying that constitutes disclosure. And the Court knows that an insider deal is subject to strict requirements of disclosure and examination for fairness. That hasn't happened here. The debtor now discloses in this reply that was filed a day ago, that Dr. Ji through trust is going to initially loan 100 percent of the buyer. Only then after the sale closes, I guess, will Dr. Ji negotiate and document his deal. I don't believe that.

So that to me is an issue because the fact that Dr. Ji's benefits that he's negotiated for at the same time that this purchase was negotiated with him, apparently, affects the consideration. And a sale to an insider based on inadequate disclosure, one could say concealment, cannot be found to be a sale in good faith. And so that's our argument on disclosure.

Plan modification, just very briefly, on the simple face of it, creditors were told in the disclosure statement and the confirmed plan provided that existing equity rights will be canceled. Now the debtor wants to modify the plan, feels it's important enough to modify the plan to provide that those rights are preserved. And I confess that I don't understand why. I heard and understand that the argument that creditors retain priority in distribution before equity, but I don't

believe that that means that equity holders can receive anything if creditors are not provided for in full.

So I think it's a violation of the absolute priority rule as it stands. If it's accepted by classes of creditors after full disclosure, then yes, otherwise no.

So the final point that I wanna make is this. I think that this order in its present form, as presented a few hours ago, is subject to being misused to contend that somehow Dr. Chen and Dr. Miao are barred from asserting rights against Concortis Biosystems, you know, to recover the stock in the merger agreement that was between them and Concortis and not between them and Sorrento. I also think that it may be misused to somehow cause Concortis Biosystems to refuse to issue the 20 percent in equity that was clearly promised in black and white under that merger agreement.

So I think, I mean, and this to everyone here, perhaps is a minor point. You know, we're going from the sublime to the banal in my presentation about Dr. Chen and Dr. Miao. But I think that this possible misuse of the order should be guarded against by the inclusion of appropriate language in it. And I am available to do that quickly.

They're talking about a sale that will close by the end of this month. I don't know in light of that, how a record has been made about waiving the provisions of the Federal Rules of Bankruptcy Procedure that stay this closing for 14 days

after entry of the order. But regardless, I mean, there is enough time for us to at least discuss.

And I've been, and I will say with Mr. Gordon, he's been very open to discussing these things with me. And I have no problem meeting conferring with him or anybody else on the debtors' side. To put some language in the order that makes clear what is being sold and what it is being sold free and clear of.

And if we can't reach an agreement, I would ask for the opportunity to submit an alternative order with this little redline paragraph that does explain that. And that the Court I think can agree with based on this record. And thank you. And thank you in particular for putting up with my inability to use the telephone, I guess it is.

THE COURT: You just haven't been around long enough to see how bad I am, Mr. Kirby. So anyhow, thank you very much for your time.

Okay. I'll give debtors' counsel an opportunity to respond to everything and then I'm going to rule.

MR. GORDON: And just a few things. I think counsel focused on the fact that the claim was against Sorrento, the debtor, which I did know, but I also noted as he did that the claim is against Biosystems as well. And like I said before, Biosystems is an asset of the debtor. This is no different than a piece of land.

Number two, I think he again admitted they are trying to get the assets, quote, "back". Again, he's acknowledging that the assets were transferred to Sorrento.

Number three on the insider deal, just to clarify, Dr. Ji owns 100 percent now based on the trust. The equity splits will be determined pre-closing, not post-closing, depending on the investments that come in for the sale. But again, in any event, we contend that that's all irrelevant. Even if he owns 100 percent now and forever, this is the best and only actionable transaction, the process was fair, it was negotiated by an unsecured creditors committee, a chief restructuring officer with Dr. Ji completely on the other side.

And last, in terms of why equity remains alive, I don't think that it's super relevant to the modifications, but just for clarity and for information, it frankly allows equity to have upside if recoveries are significant enough to pay creditors in full. There's really not any downside and it allows equity to trade if they want to trade. And also frankly, it's a little easier on the process where the reversionary consideration of the trust exceeds creditors' claims can go to Sorrento, the entity for the benefit of shareholders rather than directly.

So unless Your Honor has any further questions, we would ask that the objection be overruled.

THE COURT: Thank you. So before the Court is

consideration of a motion filed by the debtors seeking to -- it was filed a Docket Number, I wanna make sure I've got this right, 1884, seeking to do a few things to enter into a final DIP, approval of a final debtor in possession financing to approve the sale of assets to Dr. Ji and an entity related there too. And also to make certain modifications to the confirmed Chapter 11 plan.

The motion I would note for the record was filed, again, at Docket Number 1884. And the motion actually requested emergency relief well before today and was filed on February 19th. And it sought emergency relief far sooner than we were today. The Court held initial hearing. Initial request was for February 24th. The Court held a hearing and based in part on statements from Mr. Glenn, a member of the -- represents the equity committee, the Court extended until today. The Court entered an interim order approving the DIP here.

But again, based on discussions at that hearing, including kind of certain requests made by the United States Trustee at the time, Mr. Duran was here, and limited the amount of the interim DIP to kind of an initial draw. No final request was approved at that time. Allowed the debtor to just have essentially 3 million, a draw of 3 million to pay for just necessary operating expenses. So all rights were preserved till today.

I'm going to find that there's been proper notice and service of all required notices to getting us to today. Let me just deal, I'm going to deal with them in buckets. I'm going to deal with the DIP. I'm going to deal with the sale of the assets. And then I'm going to deal with the modifications to the Chapter 11 plan.

The Court has considered the evidence before the Court today. The Court understands, I'll note this at the outset too so I don't forget that there have been certain agreements made that are in a proposed order with certain objecting parties to resolve their objections and certain statements made on the record today. I am accepting all of those agreements. I find that they're in the best interest of the estate and consensually resolve disputes. So I'll note that.

So let me deal with the DIP. The request is for a senior secured superpriority financing. We look to Section 364 of the Bankruptcy Code based upon the testimony of Mr. Meghji. I'm going to note a few things. The relief requested certainly immediate. Note that Mr. Meghji testified that the debtor is essentially going to run out of cash and that has uncontested here today. That the debtor is in certain need of financing and the Court has presented no other alternative for the proposed financing that is before the Court today.

I'd note that Mr. Meghji testified that there was no

opportunity to find funding on an unsecured basis. And the proposed financing here, the terms are necessary. The amount is necessary. And it also has very favorable terms, one that you rarely see in debtor in possession financings that this Court sees. No fees, right, only payment of interest, a $40,000 payment of interest, no prepayment penalty. So better financing comes along. Someone can take this out for a short period of time.

The inability to foreclose, even on a final basis, you still got to come into court on short notice, give everyone an opportunity to come in and let the debtor come in. You know, and then even if the lender wants to foreclose based upon the evidence, you know, the lender is going to be -- you know, the lender is going to have to come in and essentially get a purchaser today. They're going to have to complete the purchase, right. You can't just come in and just take the assets for $5 million. And so I find that the terms of the financing are proper. I find that the proposed terms of the financing are proper.

And I do find, and I do note, you know, it's not uncommon to have emergency motions for debtor in possession financing that are heard on far shorter notice. And so I find, think the process in terms of due process has been well served here. We had an interim hearing and parties had opportunity for a final.

I do note that the terms of the debt involve an insider, Dr. Ji, make the Court give this a much closer look and made sure that there was no undue influence here. But I find that based upon the evidence before me, Mr. Meghji negotiated on behalf of the debtor. The debtor had independent advice and so did Dr. Ji represented. They each had their own law firms. There was arm's length transactions, arm's length negotiations. And so I'm going to approve the terms of the financing here.

Again, this is the second hearing that we've had on this. And so, and we intentionally -- I think it's important to note that we intentionally slowed the process down here. I give a lot of credit on that to Mr. Glenn, counsel for the equity committee, and Ms. Heyen, who are here today, and the United States Trustee, the office of the United States Trustee. I feel very comfortable approving the terms of the financing here.

So next we go to the sale of the assets. To that, we look to Section 363 of the Bankruptcy Code, which authorizes the debtor to sell assets outside of the ordinary course of business. The standard, applicable standards under the Fifth Circuit require sound business justification, right, and articulated business reasons to sell the assets outside of the ordinary course of business.

Here, the proposed assets, again, are being sold to a

company, but it really involves an insider. And again, the Court, again, gives this insider transaction, considers it an insider transaction, gives it a much closer scrutiny to determine whether the transaction was really at arm's length, and whether there was a fair and reasonable negotiation here. And if the buyer is really entitled to the protections of a good faith buyer. The Court also looks to other sections of the Code, right, at 363(n), right, whether there was any collusion in connection here.

Based upon the evidence that is before the Court, the Court finds that the proposed terms of the sale, the price of the sale, the negotiations, including the sale, are all sound business justifications here. The business judgment standard has been met. There are, even looking at this at a closer, and looking closer, because the sale involves an insider.

The Court understands where the debtor are. And I take Mr. Meghji's words seriously because he said it a lot. And that is that the alternative to today, and why people are wondering why we're holding a hearing today, and it's because, based upon everything that I've been hearing, which is uncontested, the debtor was going to have to liquidate. And that would have created a, you know, right, it would have created severe harm for creditors and equity holders, right?

And once a case converts, it is a blunt object conversion. There is no smooth landing into Chapter 7. It

just occurs, and people's rights get stripped. And the Code says what it says, and that's what happens. And here there was an opportunity to provide an opportunity. So to me, based upon the evidence before me, the debtor has well-established sound business justification, and I understand the sale is to an insider. There is no alternative. There is no other buyer that is sitting here before today. And the Court has given plenty of time, and anybody could have showed up today.

We are where we are. I take Mr. Shinderman's words carefully. You know, we are where we are. Based upon where this debtor is today, I'm going to find that the sale is, should be approved.

There's one objection out here by Chen Miao. Chen Miao, objecting parties, and that goes to the proposed sale of, you know, their interests in certain property. There are arguments that the rescission claim should not, sales should not be part, shouldn't be sold free and clear of their claims. And they're in connection with this sale, or there should be qualifying and clarifying language that at some point a sale order won't be used offensively against them.

So the argument here involves Section 363(f) of the Bankruptcy Code. And let's go then back to interpreting the Bankruptcy Code starts with analyzing the text. That's where we always start. Whitlock v. Lowe (In re DeBerry), 945 F.3d 943, 947 (5th Cir. 2019), in matters of statutory

interpretation, text is always the alpha.

Go to Bedroc Ltd. v United States. I cite it virtually in all of my decisions. This is incredibly consistent of me. 541 U.S. 176, 183, (2004). The preeminent canon of statutory interpretation requires to presume that the legislature says in a statute what it means and means in a statute what it says there. It was quoting Connecticut National Bank v. Germain, 503 U.S. 249, 253-254, (1992).

So what does 363(f) say? As a trustee, which is the debtor in this case, in their Chapter 11 case, may sell property under Subsection (b) or (c), which (b) is what they're proceeding here, free and clear of any interest in such property of an entity other than the estate, only if, and the focus here is (f)(4), such interest is in bona fide dispute, or (5), the entity could be compelled in a legal or equitable proceeding to accept the money satisfaction.

So what does it mean to be in a bona fide dispute? Again, you look at what the Code says. It contemplates that the debtor can sell property free and clear of any interest in property if it's subject to bona fide dispute. That's what the text says.

Interest in property is what's at issue here, and what Mr. Kirby is describing on behalf of his client is an interest in property. They think they're entitled to 20 percent. The Code expressly contemplates that interest in bona

fide dispute, the trustee is allowed to sell it subject to the dispute so that the estate's liquidation won't be improperly delayed while these disputes are being litigated. And then what's in the evidence right now is a complaint. Parties are fighting about an interest in property and who owns the interest in property and whether that interest should be rescinded at some point.

I would note that for the record, at Docket 1985, both Chen and Miao have both filed perusive claims and they're asserting money damages, and they believe that they're entitled to damages. So there's clearly a dispute. There's a complaint that is into evidence that the parties are being litigated. The stay has been requested. The prior judge didn't lift a stay at the time, but there's clearly a litigation that's out there right now.

And whether what will happen one way or the other in terms of the litigation, that's really not before the Court today. The Court will just permit, to the extent applicable, 363(f)(4) is satisfied by the sale of the debtors' interest that are contemplated today.

I would note for the record too, that the Court has taken the time and really considered the Ninth Circuit decision Mr. Kirby cites, the Rodeo Cannon Development in which the Ninth Circuit noted that under 363(f)(4), the Court there, the Ninth Circuit held in that particular case that, you know, the

Court may have, should have in some instances, or should have considered really resolving the property dispute before ruling on 363(f)(4).

But that's not what the Code says. And the code doesn't provide that. And I'm not going to read anything into the Code. But the Code doesn't already say, the Code contemplates that these disputes, and they happen more than people think, not just in the Chapter 11 context, but in the consumer context, these disputes are readily resolved. 363(f)(4) says what it says, and the Court will enforce it as written. Strict textualism is what is required here, and the Court will enforce it.

You know, the trustee was really -- the debtor was really here, just required to establish that there was an objective basis for a factual dispute. But the complaint itself does that.

There was a legal dispute as to the validity here. The Court's not required on a 363 sale, and the rules don't contemplate it, and neither does the Code that is a condition to authorizing a sale under 363, including sales-free clear on the 363(f), that I must determine and resolve property disputes. Right? I mean, in other words, it would essentially write 363(f)(4) out if the Court -- there would be no bona fide dispute, because the Court would have to resolve it before then.

But I do note that that is a case that has been cited there, the Rodeo Cannon case, and even Collier's, you know, if you look at Collier's on Bankruptcy on the 363(f), it acknowledges that. I would note for the record, and so I think strict textualism provides that, and so I don't think -- it's not binding on me as well.

I would also note that the Ninth Circuit BAP, in a decision shortly after that, read and construed that Ninth Circuit language as a -- not as a condition, but maybe guidance that courts somehow should do that. And I would also note that at 362 F.3d 603, the Ninth Circuit in 2004 actually withdrew its decision on the Rodeo case based on a subsequent stipulation. So it's unclear what binding effect that Ninth Circuit decision even has in California. But certainly in the Fifth Circuit, I find no authority for it, and I think strict textualism would provide for a different answer.

So to the extent that what we have here is, which has been established, if what the debtor seeks to sell, and it's based upon the evidence that's what they're seeking to sell, an interest in property, at the property of the estate, that asset may be sold free and clear of interest in property that are subject to a bona fide dispute.

Parties can look to the cash and there are proofs of claims here. Also questionable whether this debtor may, whether, excuse me, this creditor may be subject to bona fide,

not just to a bona fide dispute, I should say, but whether they submitted to the jurisdiction here by filing proofs of claims and may be subject to the remedies sought in there. I do note that they also request equitable remedies here, but I assure folks, and I'm, you know, I don't think 105 in any way can be used to the extent that that's the equitable remedy, can be used to override the express provisions of the Bankruptcy Code.

So I'm going to overrule that objection here. Because what's established here is an interest in property of the estate that is held by the debtor. And that's what I'm saying can be sold free and clear of interest under 363 (f)(4) and (f)(5).

I need to make sense. So I'm approving the sale. And I understand that today that has consequences, are the results of consequences.

I'm going to note for the record, I'll just say it. I've been involved in this case since October. I won't rehash everything, but I am going to say this and I'll say it so that it's said, because I think it's important to note for the record. The evidence presented before me about where the debtor is, its cash position, its efforts to market are uncontested. I'm also going to note that the creditors committee has been zealously advocating for unsecured creditors the entire case. I'm looking out for them and I understand why they support the relief requested.

I'm also going to say representatives from the equity committee are here today. And if there is one thing that I know that they've been doing since October, since I got here, is representing the interest of equity holders. It's an extremely difficult case. I know I see Mr. Glenn here today. I know he and I didn't see eye to eye in a prior hearing, but there can be never question that he is advocating zealously. Every time he's come into this court for the committee and for equity interest holders, I take him at his word. And it's not just taking him at his word. Ms. Heyen has been here for a few hearings as well. They've been trying, and I'm not even going to begin to even -- it's today, I guess we'll talk a little bit more about that on Monday.

But I just note that I got it. There are tough consequences, and I'm sure unsecure creditors are still wondering and may be wondering kind of when they might actually receive a recovery in connection with this case. This case has been cash-strapped, and I'll take judicial notice of it from the very beginning of this case. It's incredibly difficult circumstances this debtor has found itself in from the very beginning of this case. I'm only saying it so that it's said.

Everybody's been advocating incredibly hard for their constituencies and for their clients. I understand that the equity committee, it could be some potential upside in a couple of weeks. And if that's it, reach out to my case manager.

It'll get in front of me really fast. If something gets finalized, and I'm asking the parties to continue to negotiate in good faith and see if something can get done as we've always had.

Now Let me turn to the last portion of it, which is 1127. And again, I go back to the Code. Section 1127(b) of the Bankruptcy Code says that debtor can modify a plan at any time after confirmation after the plan, but before substantial consummation. If the Court, after noticing a hearing, confirms such plan is modified under Section 1129 of this title, that's 1127(b). Plan modifications must comply with 1125, which requires disclosures to claim holders and solicitations of their acceptance or rejection of the proposed modifications.

I'd note that in matter of Highland Capital Management, 57 F.4th 494 (5th Cir. 2023) said, although the bankruptcy, of course not, every proposed post-confirmation by the reorganized debtor is a plan modification. I'm quoting them. Although the Bankruptcy Code does not define modification, we have previously held that post-confirmation proposals constitute modifications in cases where they would alter the party's rights, obligations, and expectations under the plan. U.S. Brass, it's quoting its decision in U.S. Brass Corp v. Travelers Insurance Group, 301 F.3d 296, 309 (5th Cir. 2002). So that's what the Code says.

You know, so the first question is, is this even a

plan modification? What is being proposed here? It is to modify the plan to provide that equity on the effective date isn't being canceled. But if after all, and I do note that the text of the proposed amendment say if unsecured creditors get paid in full, then shareholders will, those equity owners, right, equity isn't being canceled.

So theoretically, someone who holds the shares on this day may have the ability to sell the shares or can retain the shares. But if there's some upside, they can share in the upside it provides, I would note for the record. You know, does that require a plan modification to, you know, does that alter the rights or the expectations of unsecured creditors? No, because unsecured creditors have to get paid in full before an equity can get anything. All right.

The absolute priority rule is not being violated here because unsecured creditors are going to get paid in full. 1129(a)(7) isn't being violated here because no one is going to receive on account of any proposed modifications under the plan more than they would receive in a proposed liquidation. That hasn't changed. Unsecured creditors still have to get paid in full before equity receives anything.

Does this provide a better, a potential more optionality for equity? I think it does. They were deemed to reject under the plan. They weren't solicited under the plan. So it doesn't require resolicitation to a group that was

already deemed to reject the plan. And it doesn't change the priorities, Bedroc principles under the Bankruptcy Code.

So you know, is this a real plan modification? I'm not so sure it actually is. I'm not sure that on the Fifth Circuit guidance and what the Fifth Circuit has said, what a plan modification is, I'm not sure. For the sake of providing completeness for the parties, assuming that it is, you know, does 1125 mean work? It's after confirmation. Is it before substantial consummation of the plan? Yes, it is. Right.

There have been no, what the substantial consummation of the plan mean? You then turn to Section 1102 of the Bankruptcy Code, which defines what substantial consummation of a plan means. There have not been distribution of all or potentially all assets under the Chapter 11 plan equity. Quite frankly, there was substantial consummation. We wouldn't even be talking about this provision here because equity would have been canceled here upon the effective date.

If the plan never went effective and it was described in the disclosure statement, which I note, and it was stated at the confirmation hearing that plan confirmation was not going to go effective, although confirmed in early -- I signed an order in early December because there were still certain transactions that needed to happen. So it was always contemplated that something could happen between December and where we are today.

And again, no one is working harder here. Well, maybe working as hard and, you know, bankruptcy courts only see what they see and it is limited, but no one's working harder than the creditors committee, the equity committee here and the debtors to try to see if there's something that can get done.

And I got it. We're going to have a really contested hearing on Monday and we'll see where it goes. I have nothing to say about it other than we'll see each other on Monday. But I got to make this, I got to make rulings today.

Liquidation is on the table today. That's what's on the table today. Chapter 7, based on the undisputed evidence, is here. There's a proposed financing that gets to us closing an uncontested, I'm putting an uncontested amount of money to fund a potential litigation trust with the opportunity for equity to continue to have an opportunity to continue to see if they can do a deal with NOLs and if that can be done to give the equity committee more time that it asked for. It's a difficult decision, but an easy one because the evidence takes the Court where it is and the Code says what it says.

I'm going to grant the proposed financing in the best interest of the estate. It satisfies 364. I'm going to approve the sale of the assets to the proposed buyer. I'm going to find that 363(m) is satisfied, and 363(n) is satisfied, the sale on the 363(f) is satisfied, everybody.

You know, if there's some proposed use of the order

at a later point in time, then I'll deal with it. That's not what I'm having today. I'm just being asked to approve a sale and I'm going to limit it to what we've got.

There's potential settlements that have been reached with other parties here and I'm going to approve those settlements in the proposed order. I understand there's going to be some tweaks and I'm going to ask debtors' counsel, if they could, to submit a revised order when I know there was like some knit language that there wasn't any additional tweaks that need to be done. Just submit an order.

MR. GORDON: Your Honor, sorry, I think we're good and I don't know if counsel is still on. I think we're good with the order that's on the docket and we'll just do the spelling on the record if that works.

THE COURT: All right, that works for me. I'll sign it there. I think I've made an assurance to the United States Trustee and I'll honor that as well in terms of the venue language I'm going to approve.

I'm going to overrule any objections to the extent that they -- that we haven't talked about them. But my understanding is all of them have been resolved. I'll signed the proposed order. And unless there's anything else to talk about, I'll see everyone on Monday.

MR. GORDON: One housekeeping item, Your Honor. We filed a motion last Friday to approve what we called the Virex

settlement. And since we would be here on Monday, if it's acceptable, we'd like to have that heard then as well.

THE COURT: Okay. We can talk about it on Monday, and if anyone has any objections that anybody wants to put in now, we'll take that up.

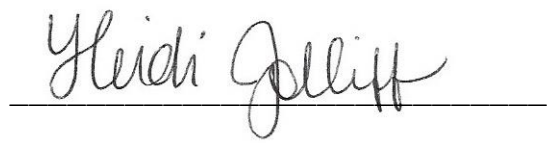
Okay. Thank you very much. Have a good day.

(Proceedings concluded at 3:12 p.m.)

* * * * *

C E R T I F I C A T I O N

I, Heidi Jolliff, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



HEIDI JOLLIFF, AAERT NO. 2850 DATE: March 12, 2024

ACCESS TRANSCRIPTS, LLC